

DEPARTMENT OF FOOD AND AGRICULTURE

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September 23, 2002

NEPA Task Force
The President's Council on Environmental Quality
c/o Rhey Solomon
P.O. Box 221150
Salt Lake City, UT 84122

Dear Mr. Solomon:

Subject: Comments on NEPA Implementation Practices

The California Department (Department) of Food and Agriculture offers the following suggestions on potential improvements to NEPA for your consideration. The Department's mission is to protect and promote California agriculture and the natural resources upon which it relies. Therefore, our comments address not only process issues, but also how NEPA treats project impacts on agricultural lands.

RECOMMENDATION #1: An Outcome Oriented NEPA Analytical Process

In our experience, NEPA results in an informational document with insufficient direction for an outcome that avoids, eliminates or lessens a project's environmental impacts. We recommend changes to NEPA that create an analytical process that not only results in good information on environmental impacts and mitigation, but also the impetus for an outcome that results in the best feasible project for the environment.

More specifically, NEPA requires *consideration* of mitigation measures and alternatives that address project impacts. In contrast, California's NEPA counterpart, the California Environmental Quality Act, requires that significant project impacts be mitigated unless the lead agency is able to make findings that there are overriding considerations that warrant approval of the project.

Therefore, we recommend that changes to NEPA be considered that would require lead agencies to mitigate project impacts, or select project alternatives that avoid or lessen the impacts, unless other public values override the need to mitigate the adverse environmental impacts, as documented by substantiated findings related to the public interest.

RECOMMENDATION #2: Project Alternatives Analyzed Against a Preferred Alternative

NEPA begins with an analysis of an array of project alternatives, and concludes with the selection of one alternative as the proposed project. We believe that this makes for a somewhat artificial analysis that may or may not result in the best project for the environment. We recommend that, instead, the NEPA analysis start with the project as proposed by the lead agency. In this scenario, it would only be after the impacts of the project have been analyzed, and the significant adverse impact identified, that alternative configurations or locations of the project that avoid or lessen the identified impacts are developed and considered. Ideally, at the end of this process an environmentally superior project is identified for lead agency consideration. We believe that this

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latter process will result in a more honest and meaningful analysis where the lead agency's preferred project and project objectives are compared against alternatives that have been developed in response to the initial analysis.

RECOMMENDATION #3: More Concise Joint Environmental Documents

The California Environmental Quality Act (CEQA) and NEPA allow for the preparation of joint NEPA/CEQA environmental impact statements/reports. Often these documents are unwieldy in their volume. From our experience, these large documents are not necessary and are due, in part, to the difference in approach that CEQA and NEPA take to the analysis of impacts. CEQA requires an analysis that is broad in scope, but not always in as much detail as the analysis required by NEPA. On the other hand, NEPA requires depth in its analysis, but with a narrower scope. Therefore, a joint document is often both great in depth and breadth. We recommend that greater flexibility be imparted to the NEPA analysis process in order enable better resonance between the depth and breadth required by federal and state analytical processes.

RECOMMENDATION #4: The Federal Farmland Protection Policy Act and NEPA

The Federal Farmland Protection Policy Act (FPPA) of 1981 requires federally funded projects that impact farmland to be subject to a Land Evaluation and Site Assessment (LESA) review. The USDA Natural Resource Conservation Service and the lead federal agency jointly conduct the rating process, which results in a score. Under the FPPA, a lead agency whose project scores above a certain threshold is directed to *consider* alternative projects or project sites.

We recommend that NEPA statute recognize this federal policy by incorporating the LESA analysis as a required tool for determining the significance of a project's impacts on agricultural land. The threshold of significant impact would be the LESA score as set forth in FPPA. The LESA should also serve as basis for considering project alternatives that respond to significant impacts on agricultural land.

California has developed, with a grant from USDA, its own version of LESA, using agronomic and land use factors unique and important to agriculture in California. We recommend that where states, like California, have adopted customized LESA analytical models, the NEPA agricultural land impacts (LESA) evaluation defer to the use of the state's version of LESA.

RECOMMENDATION #5: Mitigation of Project Impacts on Agricultural Land Resources

Between FPPA and the Farm Bill's Farmland Protection Act (FPA), the federal government has clear policies, and has committed significant budget resources, towards the conservation of agricultural land resources. The latter program authorizes grants by USDA to states and local organizations for the purchase of agricultural land conservation easements to protect America's best farmland from urbanization.

CEQA currently requires the analysis and mitigation of project impacts on agricultural land. Several California state agencies consider agricultural land conservation easement purchases and dedication to be one suitable mitigation measure for the agricultural land conversion impacts

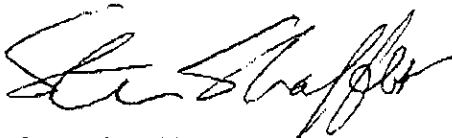
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of projects. We recommend that the Task Force consider linking NEPA with FPPA and FPA to create a cohesive national policy on farmland conservation. Under such a NEPA policy, a federal project that would adversely impact agricultural land as indicated by a federal or state LESA analysis, would be required to use alternatives or mitigation measures that lessen the impact to below the LESA threshold. If an overriding public interest dictates that the project be approved despite its impacts, the lead agency would then be required to pay an impact mitigation fee to the FPA account for the state within which the impact occurred, if that state had an active agricultural land conservation and protection program.

An example of where such a change in NEPA policy could help with the conservation of agricultural land is the State Route 7 project in Imperial County, California. The new freeway will cut across some of the best agricultural land in the world. The California Department of Conservation and the California Department of Transportation have agreed that the project's impacts should be mitigated through the use of agricultural land conservation easements on adjacent lands. However, the Federal Highway Administration has balked at funding the mitigation because of the lack of statutory impetus and precedence.

Thank you for the opportunity to provide input on your work with NEPA. I hope that our comments are useful. Please feel free to contact me at (916) 657-4956 if you would like to explore our comments further.

Sincerely,



Steve Shaffer, Director
Agricultural and Environmental Stewardship

cc: Governor's Office of Planning and Research

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FAX MEMORANDUM

TO: NEPA Task Force

ATTENTION:

FAX #: 801-517-1021

FROM: Steve Shaffer

DATE: 9/23/02

NUMBER OF PAGES (Including Cover Sheet): 4

COMMENTS: Comments on NEPA Implementation Practices.

*To You
THIS WAS FIXED[^] YESTERDAY
IT DIDN'T GO THROUGH.*

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